***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P.No.26528 of 2005

% 28-12-2005

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Gummadi Babu Rao & others

…Petitioners

And

$ The Bharat Sanchar Nigam Ltd,

Rep.by its Chairman & Managing Director,

New delhi.

…Respondent

! COUNSEL FOR PETITIONERS: Mr.V.JAGAPATHI
^ COUNSEL FOR RESPONDENTS: Mr.Y.RAVINDRA,
STANDING COUNSEL FOR BSNL

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? CITATIONS:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.26528 OF 2005

Dated December 2005

Between:

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And

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…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.26528 OF 2005

O R D E R:

The petitioners, who are working in various capacities in the Bharat Sanchar Nigam Limited (BSNL), seek a declaration that the order dated 8.11.2005, passed by the second respondent herein, communicating the decision, taken by the first respondent, as illegal, arbitrary, discriminatory and contrary to the orders, dated 13.7.2005, passed by this Court in W.P.No.16015 of 2004 and batch. The matter relates to relaxation of standards in Part-I examination for the post of Junior Accounts Officer (JAO).

The next superior post for the petitioners is JAO. Appointment to that post is purely by way of promotion, but subject to passing of Part-I & II examinations, conducted for that purpose. The petitioners appeared in the Part-I examination held in the years 1999 and 2003. They did not secure the minimum qualifying marks. Drawing analogy from the relaxation granted by the respondents, in respect of the promotion to the post of Junior Telecom Officer (JTO), the petitioners approached the Hyderabad Bench of Central Administrative Tribunal, by filing O.A.No.1313 of 2003. The Tribunal disposed of the O.A., on 6.1.2004, directing the respondents to consider the representation of the petitioners herein, for extending the benefit of reduction of qualifying marks in Part-I & II examinations for the post of JAO held in the years 1999 and 2003, on the same lines, as was done vide orders dated 10.3.2003, for the posts of JTOs. The respondents passed an order dated 7.4.2004, stating that it is not possible to accede to the request of the petitioners. Challenging the same, the petitioners filed W.P.No.16015 and 16413 of 2004. The writ petitions were allowed and the respondents were directed to consider the matter afresh, keeping in view the relaxation given for the posts of JTOs.

In compliance with the direction issued by this Court, the first respondent considered the matter and rejected the representation of the petitioners. The same was communicated through the impugned order.

Sri V.Jagapathi, learned counsel for the petitioners, submits that except for the difference as to the nature of duties, the posts of JTO and JAO are similar in all

respects, and when the respondents have relaxed the standards for the qualifying examination for the post of JTO, there was absolutely no basis for according a differential treatment to the petitioners. He contends that on account of the onerous standards prescribed by the respondents in the examinations for the post of JAO, majority of the candidates who have the requisite seniority failed in the examination, and as a result, about 2000 posts remained vacant. He alleges that except repeating the stand taken by them, while passing the order dated 7.4.2004, the respondents did not indicate any other grounds.

Learned Standing Counsel, on the other hand, submits that no individual can claim relaxation of standards or percentage of marks as of right. He alleges that adequate number of candidates have cleared the examination and the contention of the petitioners that posts are vacant, on account of non-availability of candidates, is not correct.

This can be said to be the third round of litigation, insofar as it relates to the claim of the petitioners, for relaxation of the standards in the qualifying examination, for promotion to the post of JAO. The grounds urged by the petitioners are that the standards in the test are very high; and that the respondents have discriminated, in the matter of relaxation. Before dealing with these contentions, the parameters for the promotion to the said two categories of posts need to be taken note of.

The post of JTO is on technical side, whereas the JAO is on accounts side. 50% of the posts of JTO are filled through direct recruitment, 15% through promotion from departmental candidates and 35% by holding a competitive examination, restricting the participation, to the service candidates. In contrast, the appointment to the post of JAO is exclusively through promotion.

Against 15% quota in the posts of JTO, earmarked for service candidates, minimum educational qualifications are stipulated *viz*., pass in 10+2 pattern examination, and possession of a diploma of 3-years duration in the specified technical discipline. There is no stipulation of educational qualifications, for the post of JAO.

It is always for the appointing authority to prescribe the tests as well as their standards, for selecting the candidates for appointment or promotion to any particular post. Such qualifications or standards would in turn depend upon the

nature of duties to be discharged by the candidates, selected for the concerned posts. Courts maintain utmost reluctance in the matter of evaluation of standards prescribed by the academic agencies or appointing authorities. The only scope for interference in these matters is, where the authorities discriminate between candidates who are similarly situated. At any rate, no individual has a fundamental, or legal right, to insist that the standards of a given test, must be of a particular level; much less to compel the authority, to relax the standards, stipulated by it.

Insofar as the plea of the petitioners as to discrimination is concerned, it is difficult to accept the same, in the context of their drawing analogy to different categories of posts. It has already been indicated that the posts of JAO and JTO are totally different, from each other, in many respects. There does not exist any functional or other related similarity, in these two posts.

In the impugned order, the respondents have furnished distinguishing features of these two categories of posts, and narrated the circumstances under which relaxation was granted, in respect of 15% quota of posts of JTOs. It has been stated that the incumbents concerned were already trained on the technical side, and were expected to undertake inspection and maintenance of Telephone Exchanges, Telephone apparatus, etc. The respondents point out that JAOs are a specialized group of employees, who have to handle the complicated and important matters on financial and accounting branches.

The question of discrimination would arise, if only the two categories, which are compared with each other, are similarly situated. The nature of functions, method of appointment and qualifications prescribed for promotion, are different for the posts of JTO and JAO. The petitioners cannot undertake any comparison of the same, much less complain of discrimination.

The allegation of the petitioners that large number of posts of JAOs are lying vacant, on account of non-availability of qualified candidates, has also been adverted to, by the respondents. It is stated that there are 500 posts of the Grade of JAO, and 800

candidates, who have qualified in Part-I, are scheduled to take Part-II examination.

For the foregoing reasons, the writ petition is dismissed. There shall be no order as to costs.

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(**L.NARASIMHA REDDY, J)**

Dt. 28th December 2005

Note: L.R.copies be marked.

(B/o)

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